UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEV	V YORK	_ X	
Omer Levy	Dlointiff		Docket No. 11 CV 3155 (JFB)(ETB)
-against-	Plaintiff		(012)(212)
Receivables Performance Management, LLC, and Main Street	Defendant		AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL
Acquisition Corp.			<b>Unlawful Debt Collection Practices</b>
		X	TRIAL BY JURY DEMANDED

Plaintiff, by her attorney Joseph Mauro, complaining of the Defendant respectfully alleges and shows to the Court as follows:

## **I. INTRODUCTION**

- 1. The Defendants are debt collectors who violated the Plaintiff's right to privacy in an attempt to collect an alleged consumer debt. The Defendants used a robo-dialer to telephone the Plaintiff's cell phone at least 284 times. The Defendants refused to stop calling despite Plaintiff's demands, and despite the Plaintiff informing the Defendants that their behavior was illegal. The Defendants called repeatedly on the same day after being directed to stop. The Defendants harassed and abused the Plaintiff.
- 2. This is an action for damages brought by two individual consumers for Defendant's violation of the Fair Debt Collection Practices Act, 15 U.S.C. 1692, et seq. (hereinafter "FDCPA"); and the Telephone Consumer Protection Act (TCPA), 47 U.S.C. Section 227 et seq..
  - 3. According to 15 U.S.C. 1692:

- (a) There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.
- (b) Existing laws and procedures for redressing these injuries are inadequate to protect consumers.
- (c) Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.
- (d) Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.
- (e) It is the purpose of this title to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

### **II. JURISDICTION AND VENUE**

4. Jurisdiction of this Court arises under 15 U.S.C Section 1692k (d); 28 U.S.C Section 1331 and or 18 U.S.C. Section 1337; and supplemental jurisdiction exists for state law claims and the TCPA claims pursuant to 28 U.S.C. Section 1367 as these claims are predicated upon the same facts and circumstances that give rise to the federal causes of action. Additionally, the Court has jurisdiction based upon the provisions of 28 USC Sec. 1332 in that there exists complete diversity of citizenship between the Plaintiff and the Defendants and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs. Declaratory relief is available pursuant to 28 U.S.C. Section 2201, 2202 and New York State law and the TCPA. Venue in this District is proper in that the Defendant transacts business here; and the conduct that is the subject of this complaint occurred here.

#### **III. PARTIES**

- 5. Plaintiff, Omer Levy, is a natural person residing in Queens County, New York. Plaintiff is a consumer as defined by the FDCPA.
- 6. Defendant, Receivables Performance Management, LLC (RPM) is a foreign corporation not authorized to do business in New York State. The principal purpose of Defendant is the collection of debts using the mails and telephone, and Defendant regularly attempts to collect debts alleged to be due another.
- 7. Defendant, Main Street Acquisition Corp. (Main Street) is a foreign corporation not authorized to do business in New York State. The principal purpose of Defendant is the collection of debts using the mails and telephone, and Defendant regularly attempts to collect debts alleged to be due another.
- 8. Defendants are "debt collectors" as defined by the FDCPA, 15 U.S.C. Section 1692a(6).
- 9. At all times relevant to this complaint, the Plaintiff was and is a "person" as defined by the TCPA 47 U.S.C. Section 153 (32).
- 10. At all times relevant to this complaint, the Defendant RPM has used, controlled, and/or operated "automatic telephone dialing systems" as defined by the TCPA 47 U.S.C. Section 227(a)(1) and 47 C.F.R. 64.1200 (f) (1).
- 11. Defendant RPM utilizes an automatic telephone dialing system made by a company called Nobel.
- 12. Defendant Main Street knew or should have known that RPM used an "automatic telephone dialing system" as described herein.

- 13. The Plaintiff alleges that at all times herein mentioned, each of the Defendants were, and is now, the agent, servant, employee and/or other representative of the other Defendants, and in doing the things herein alleged, was acting in the scope, purpose and authority of such agency, service employment, and/or other representative capacity with the permission, knowledge consent and/or ratification of the other Defendants. Any reference hereinafter to "Defendant," or "Defendants," or "Debt collector," without further qualification is meant to refer to each and all defendants herein jointly and severally.
- 14. The acts of the Defendants alleged herein were conducted by its employees acting within the scope of their actual or apparent authority.
- 15. The alleged debt of Plaintiff was incurred for personal, family, or household services in that it was alleged to have been incurred for a consumer credit card, no part of which was used for business purposes.

#### IV. FACTUAL ALLEGATIONS

- 16. Plaintiff repeats paragraphs "1" through "15" as if fully restated herein.
- 17. Plaintiff incurred a consumer credit card debt ("the debt"). The alleged debt of Plaintiff was incurred for personal, family, or household services, and not for any business purpose.
- 18. Unfortunately, and for reasons beyond his control, Plaintiff was unable to repay such debt on time and the debt went into default.
- 19. At some point unknown to Plaintiff, Defendant Main Street Acquisition alleges to have acquired the right to attempt to collect such debt. Main Street Acquisition Corp. then enlisted the assistance of Defendant RPM to help collect the debt. Neither Defendant

has produced, nor has Plaintiff seen, any documents indicating that Defendants have the legal right to attempt to collect the alleged debt.

- 20. Defendants and Plaintiff have no personal or business relationship. All communications between the Plaintiff and the Defendants were in connection with the collection of the alleged debt
- 21. On or about July 14, 2010 RPM obtained the telephone number 646-286-4424 from a company called Trans Union.
  - 22. Defendant RPM uses a dialing system called "Nobel Systems."
- 23. After obtaining the telephone number 646-286-4424, RPM began to call the number using their Nobel dialing system.
- 24. RPM's Nobel dialing system called 646-286-4424, and when a person was reached at that number, an employee of RPM was notified so as to be able to speak to the person.
- 25. Exhibit A is a printout of a report generated from the RPM's Nobel dialing system showing all calls made by RPM to the Plaintiff's telephone number 646-286-4424.
- 26. RPM called 646-286-4424 using it's Nobel system 284 times as indicated in Exhibit A.
- 27. Within one year preceding the filing of this action, the Defendant RPM on behalf of Main Street persistently telephoned the Plaintiff's cellular telephone using an automatic telephone dialing system as otherwise indicated herein.
- 28. Defendant did not receive any direct communication from the Plaintiff authorizing the Defendant to telephone the Plaintiff's cellular phone.
  - 29. Defendant telephoned the Plaintiff's cellular telephone virtually every day.

- 30. The Defendant telephoned the Plaintiff's cellular telephone sometimes more than six times per day with the intent to harass the Plaintiff.
  - 31. The Defendant continued to call Plaintiff's cellular phone for months.
- 32. When Plaintiff spoke with the Defendant, the Defendant falsely threatened to sue the Plaintiff for the alleged debt.
- 33. When Plaintiff spoke with the Defendant, the Defendant falsely threatened to garnish the Plaintiff's wages.
  - 34. The Defendant misrepresented themselves as attorneys to the Plaintiff.
- 35. When Plaintiff spoke with Defendant, the Defendant falsely informed Plaintiff that when Defendant sues the Plaintiff, Plaintiff will have to pay three times the amount of the alleged debt.
  - 36. The Plaintiff disputes the alleged debt.
- 37. When the Defendant learned that the Plaintiff was Israeli, the Defendant informed Plaintiff that Plaintiff should go back to Israel.
  - 38. The Plaintiff informed RPM to stop calling, but the Plaintiff refused to stop.
- 39. The Plaintiff informed RPM that their behavior was illegal, but the Defendant continued to call.
- 40. The Plaintiff informed RPM on numerous occasions that he refused to pay them for the debt, but RPM continued to call despite such knowledge. RPM in fact would call back numerous times the next day despite the Plaintiff directly informing RPM that he refused to pay them for the alleged debt.
- 41. RPM's own account notes indicate that RPM knew that the Plaintiff refused to pay them for the alleged debt.

- 42. RPM's own account notes indicate that the Plaintiff indicated that he would seek legal representation if the calls did not cease.
- 43. RPM's own account notes indicate that the Defendant was aware that the Plaintiff informed the RPM that Plaintiff considered the consistent calls to be harassment, but the Defendant's continued to call.
- 44. The Defendant's own account notes indicate that on October 9, 2010 Plaintiff informed RPM that he refused to pay them for the alleged debt. Yet over the course of the next 10 days, the Defendants' dialer called the Plaintiff's cell phone 34 times.
- 45. RPM's own account notes indicate that on November 25, 2010 the Plaintiff informed RPM that he refused to pay them for the alleged debt, yet the Defendant called Plaintiff twice on November 26, 2010. Defendant's own notes indicate that on November 27, 2010 the Plaintiff again informed Defendant that he refused to pay them and that he considered the calls harassment. Despite this, Defendant then called Plaintiff 30 more times over the next 10 days.
  - 46. Defendant did not send the Plaintiff the notices required by 15 USC 1692g.
- 47. Defendant did not give the Plaintiff the notices required by 15 USC 1692e(11) in every communication with Plaintiff.
- 48. Defendant RPM is the agent of defendant Main Street. Main Street is the responsible for the illegal acts of RPM.
- 49. Defendant Main Street purchased the alleged debt after it was in default so as to attempt to collect the alleged debt, and as such is a debt collector.
  - 50. RPM has been sued before for violations of the TCPA.
  - 51. RPM has been sued before for violations of the FDCPA.

## V. CAUSE OF ACTION UNDER THE FAIR DEBT COLLECTION PRACTICES ACT

- 52. Plaintiffs repeats and re-alleges and incorporates by reference to the foregoing paragraphs.
- 53. Defendant's actions as described herein violated the following provisions of the FDCPA:
  - a. 15 USC 1692e
  - b. 15 USC 1692e(2)
  - c. 15 USC 1692e(3)
  - d. 15 USC 1692e(4)
  - e. 15 USC 1692e(5)
  - f. 15 USC 1692e(10)
  - g. 15 USC 1692e(11)
  - h. 15 USC 1692c(a)
  - i. 15 USC 1692d
  - j. 15 USC 1692d(1)
  - k. 15 USC 1692d(5)
  - 1. 15 USC 1692d(6)
  - m. 15 USC 1692 f
  - n. 15 USC 1692g(a)

## VII. CAUSES OF ACTION UNDER THE TELEPHONE CONSUMER PROTECTION ACT

- 54. Plaintiffs repeats and re-alleges and incorporates by reference to the foregoing paragraphs.
- 55. Within the year preceding the filing of this action, the Defendant made numerous calls to the Plaintiff's cellular telephone service using any automatic telephone dialing system in violation of the TCPA, 47 U.S.C. Section 227(b)(1)(A)(iii), and 47 C.F.R. 64.1200 (a)(1)(iii).
- 56. The Defendant did not have the prior express consent of Plaintiff to use an automatic telephone dialing system to call the Plaintiff's cellular telephone.
- 57. Under the 47 U.S.C. Section 227 b (3)(B), the Plaintiff is entitled to statutory damages under the TCPA of \$500.00 per phone call made to Plaintiff.
- 58. The Defendant willfully and knowingly violated the TCPA, and as such the Plaintiff is entitled to \$1,500.00 per phone call made to the Plaintiff pursuant to the 47 U.S.C. Section 227 b (3).
- 59. Pursuant to 47 U.S.C. § 227(b)(3)(A), Plaintiff is entitled to an injunction prohibiting the Defendants from calling his cellular telephone without his express consent.

**WHEREFORE**, Plaintiff respectfully requests that judgment be entered against Defendant, for the following:

- 1. Actual damages under the FDCPA
- 2. Statutory damages pursuant to the FDCPA and the TCPA;
- 3. Injunctive relief as described herein;

- 4. Costs and reasonable attorney's fees; and
- 5. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

The Law Office of Joseph Mauro, LLC Joseph Mauro (JM 8295) 306 McCall Ave. West Islip, NY 11795

### **DEMAND FOR JURY TRIAL**

Please take notice that plaintiffs demand trial by jury in this action.
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Attorney for Plaintiff

# **EXHIBIT A**

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(646) 2864424 (646) 2864424	73011	Ä	Ü	CC1B	System coded	7/18/2010	09:12:47	00:00:00
(646) 2864424	73011	HD	U	CC1B	System coded	7/19/2010	07:49:06	00:00:00
(646) 2864424	73011	HD	U	CC1B	System coded	7/20/2010	13:00:28	00:00:00
(646) 2864424	73011	Α	U	CC1B	System coded	7/21/2010	10:03:33	00:00:00
(646) 2864424	73011	Α	U	CC1B	System coded	7/22/2010	07:16:00	00:00:00
(646) 2864424	73011	A	U	CC1B	System coded	7/22/2010	15:28:51 14:56:13	00:00:00 00:00:00
(646) 2864424	73011	A	Ü	CC1B	System coded System coded	7/23/2010 7/24/2010	08:53:13	00:00:00
(646) 2864424	73011	A	U	CC1B CC1B	System coded	7/25/2010	14:58:47	00:00:00
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(646) 2864424 (646) 2864424	73011	Ä	Ü	CC1B	System coded	7/27/2010	13:48:29	00:00:00
(646) 2864424	73011	Ä	Ŭ	CC1B	System coded	7/27/2010	15:06:16	00:00:00
(646) 2864424	73011	A	Ū	CC1B	System coded	7/27/2010	15:49:50	00:00:00
(646) 2864424	73011	Α	U	CC1B	System coded	7/28/2010	14:50:53	00:00:00
(646) 2864424	73011	Α	U	CC1B	System coded	7/29/2010	14:21:41	00:00:00
(646) 2864424	73011	Α	Ų	CC1B	System coded	7/30/2010	08:25:48	00:00:00
(646) 2864424	73011	A	U	CC1B	System coded	7/31/2010	09:44:27 16:00:50	00:00:00 00:00:00
(646) 2864424	73011	A	Ų	CC1B	System coded	8/1/2010 8/3/2010	15:00:56	00:00:00
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(646) 2864424	73011	Α	Ū	CC1B	System coded	8/6/2010	06:56:55	00:00:00
(646) 2864424	73011	HD	U	FOTI	System coded	8/6/2010	09:37:03	00:00:00
(646) 2864424	73011	Α	U	CC1B	System coded	8/7/2010	09:13:01	00:00:00
(646) 2864424	73011	Α	U	CC1B	System coded	8/9/2010	11:16:43	00:00:00 00:00:00
(646) 2864424	73011	A	U	CC1B	System coded	8/10/2010	08;55;23 15;43:38	00:00:00
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(646) 2864424	73011	Ä	Ū	CC1B	System coded	8/13/2010	13:59:00	00:00:00
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(646) 2864424	73011	8	U	FOTI	P17	8/14/2010	12:43:47	00:00:22
(646) 2864424	80390110	HD	U	FOTI	System coded	8/14/2010	12:43:49	00:00:00
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(646) 2864424	73101	A	Ū	CC1C	System coded	8/24/2010	08:39:18	00:00:00
(646) 2864424	73101	Α	U	FF1C	JJA	8/28/2010	09:42:12	00:07:00
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(646) 2864424	17001	N	U	RP1A	KCK	9/21/2010	14:56:42	00:01:14
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(646) 2864424	17001	Α	U	CC1A	DMT	9/22/2010	05:15:37	00:00:06
(646) 2864424	17001	5	U	CC1A	MGL	9/22/2010	11:50:14	00:00:06 00:00:04
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(646) 2864424	17001	A	U	CC1A	System coded	10/6/2010	13:57:06	00:00:00
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(646) 2864424	17001	В	U	RP1A	System coded	10/8/2010	10:51:43	00:00:00
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(646) 2864424	17001	9	U	CC1A	MIT	10/10/2010	07:38:02	00:00:05
(646) 2864424	17001	MC	U	CC1A	System coded	10/10/2010	13:09:07	00:00:00
(646) 2864424	17001	D	U	CC1A	LDR	10/11/2010	07:11:27	00:00:06
(646) 2864424	17001	HD	U	CC1A	System coded	10/12/2010	05:17:13	00:00:00
(646) 2864424	17001	HD	U	CC1A	System coded	10/12/2010	10:26:44	00:00:00
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(646) 2864424	17001	9	Ū	CC1A	ICA	10/12/2010	13:38:59	00:00:03
(646) 2864424	17001	9	Ū	CC1A	DKL	10/12/2010	16:04:56	00:00:01
(646) 2864424	17001	Ă	Ŭ	CC1A	System coded	10/13/2010	05:10:53	00:00:00
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, ,	17001	Ä	ŭ	RP1A	System coded	10/30/2010	09:53;33	00:00:00
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` '	17001	Ä	Ŭ	CC1A	MGL	11/4/2010	13:26:04	00:00:02
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, ,	17001	HD	Ü	CC1A	System coded	11/16/2010	05:21:02	00:00:00
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· ·		Ä	Ü	CC1A	System coded	12/1/2010	10:08:57	00:00:00
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• •								

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(646) 2864424 (646) 2864424	17001	N	Ü	RP1A	TTL	12/10/2010	06:08:56	00:00:04
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